

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Ramar Communications II, Ltd.
v.
DIRECTV, Inc.
Request for Mandatory Carriage of
Television Station KTLL-TV,
Durango, Colorado
CSR 6305-M

MEMORANDUM OPINION AND ORDER

Adopted: July 2, 2004

Released: July 9, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Ramar Communications II, Ltd., licensee of television station KTLL-TV, Durango, Colorado, ("KTLL") filed the above-captioned carriage complaint against DIRECTV, Inc. ("DIRECTV"), pursuant to Section 338 of the Communications Act of 1934, as amended (the "Act"), and Section 76.66 of the Commission's rules, based on DIRECTV's refusal to carry the signal of KTLL on its satellite system. KTLL states that DIRECTV is providing "local-into-local" satellite service pursuant to the statutory copyright license in the Albuquerque, New Mexico DMA. In its complaint, KTLL alleges that DIRECTV has failed to meet its carriage obligations under the Commission's satellite broadcast signal carriage rules. DIRECTV filed an opposition to the complaint and KTLL filed a reply. For the reasons discussed below, we grant the complaint.

II. LEGAL BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of

1 47 U.S.C. §338; 47 C.F.R. § 76.66; See Public Notice, Special Relief and Show Cause Petitions, Report No. 0099, dated March 8, 2004.

2 See 17 U.S.C. § 122(a); 47 U.S.C. § 338. A satellite carrier provides "local-into-local" satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

3 Under Section 76.66(m)(3) of the Commission's rules, a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with its carriage obligations may obtain review of such denial or response by filing a "complaint" with the Commission in accordance with Section 76.7. 47 C.F.R. § 76.66(m)(3). Although styled a "complaint," a carriage complaint filed against a satellite carrier is treated by the Commission as a petition for special relief for purposes of the Commission's pleading requirements. See 1998 Biennial Regulatory Review: Part 76 - Cable Television Service Pleading and Complaint Rules, 14 FCC Rcd 418 (1999).

1999 (SHVIA),<sup>4</sup> required satellite carriers, beginning January 1, 2002, to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.<sup>5</sup> A station's market for satellite carriage purposes is its DMA, as defined by Nielsen Media Research.<sup>6</sup> In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.<sup>7</sup>

3. Under the Commission's broadcast signal carriage rules, each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA.<sup>8</sup> In DMAs where a satellite carrier launches new local-into-local service, the carrier must notify local television stations in writing of its intent to provide such service at least 60 days in advance and identify the location of its local receive facility.<sup>9</sup> Upon receipt of this notice, local television stations must request carriage within 30 days.<sup>10</sup> If a satellite carrier denies a local station's carriage request, it must notify the station within 30 days of its receipt of the carriage request.<sup>11</sup> Otherwise, local television stations must be carried by the later of 90 days from the satellite carrier's receipt of the station's election request or upon commencing local-into-local service in the new television market.<sup>12</sup>

### III. DISCUSSION

4. In its complaint, KTLL contends that it informed DIRECTV in a November 17, 2003 letter that it had come to the station's attention that DIRECTV intended to provide new local-into-local satellite service in the Albuquerque, New Mexico market, and that the station chose to elect mandatory carriage on DIRECTV's system.<sup>13</sup> In addition, KTLL states that the letter committed to delivering a good quality signal, at KTLL's expense, to DIRECTV's local receive facility.<sup>14</sup> KTLL states that it never received the

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<sup>4</sup> See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

<sup>5</sup> See 47 U.S.C. § 338.

<sup>6</sup> A DMA is a geographic area that describes each television market exclusive of others, based on measured viewing patterns. See 17 U.S.C. § 122(j)(2)(A)-(C); see also *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, 1934 (2000) ("DBS Broadcast Carriage Report & Order"); 47 C.F.R. § 76.66(e) ("A local market in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and [i]n the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) [i]n the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.").

<sup>7</sup> See generally *DBS Broadcast Carriage Report & Order*, 16 FCC Rcd at 1918. The Commission later affirmed and clarified its carriage rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999; Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544 (2001) ("DBS Broadcast Carriage Reconsideration Order").

<sup>8</sup> See 47 C.F.R. § 76.66.

<sup>9</sup> See 47 C.F.R. § 76.66(d)(2); see also *DBS Broadcast Carriage Report & Order*, 16 FCC Rcd at 1933.

<sup>10</sup> See 47 C.F.R. § 76.66(d)(2).

<sup>11</sup> *Id.*

<sup>12</sup> See 47 C.F.R. § 76.66(d)(2)(iii); see also *DBS Broadcast Carriage Reconsideration Order*, 16 FCC Rcd at 16577.

<sup>13</sup> Complaint at 2, Attachment A.

<sup>14</sup> Complaint at 2.

requisite notice from DIRECTV regarding its intent to launch local-into-local service.<sup>15</sup> According to KTLL, DIRECTV denied the station's carriage request in an unsigned letter dated December 19, 2003, based on the inadequacy of the station's signal, ignoring KTLL's commitment to provide a good quality signal.<sup>16</sup> KTLL restates its intent to provide such a signal to DIRECTV's receive facility.<sup>17</sup>

5. In its opposition, DIRECTV contends that on May 20, 2003, it sent notice to Ramar Communications of its intent to provide local-into-local service in the Albuquerque market.<sup>18</sup> DIRECTV states that Ramar is the licensee of both KTEL-TV, Carlsbad, New Mexico, and its satellite station, KTLL, Durango, Colorado,<sup>19</sup> and that notice to KTEL-TV at an Albuquerque, New Mexico address served as constructive notice to the station in question, KTLL.<sup>20</sup> DIRECTV argues that it acted reasonably by serving Ramar's primary station in the Albuquerque DMA, and argues that the Commission has not established strict guidelines or rules regarding the proper addressing of such a notice.<sup>21</sup> Rather, DIRECTV contends that the adequacy of a satellite carrier's local-into-local service notice should be evaluated by assessing the circumstances to determine whether the satellite carrier acted reasonably in fulfilling its notice requirements.<sup>22</sup> DIRECTV argues that KTLL was required to submit its mandatory carriage notice by June 30, 2003, but did not submit such notice until September 18, 2003, nearly three months after the relevant deadline.<sup>23</sup> Accordingly, DIRECTV argues that it is under no obligation to provide carriage to KTLL.

6. In reply, KTLL contends that DIRECTV was required to serve the station with an independent notice of its intention to provide local-into-local service in the Albuquerque DMA.<sup>24</sup> KTLL argues that the Commission has recognized that satellite television stations are full-power commercial stations for purposes of the Commission's cable mandatory carriage rules,<sup>25</sup> and that the Commission has further recognized the "general goal of making the satellite carriage rules comparable and parallel to the cable carriage rules."<sup>26</sup> KTLL argues that the May 20, 2003 letter cited by DIRECTV was addressed to "KTEL 25," sent to an Albuquerque address, references only "KTEL 25" in the subject line of the letter, and nowhere mentions KTLL.<sup>27</sup> KTLL argues that DIRECTV's fundamental failure to comply with the Commission's notice obligations forced the station to file a carriage request independent of notice,

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> Opposition at 2.

<sup>19</sup> *Id.* at 2, Exhibit 2. DIRECTV provides information from the Media Bureau's Consolidated DataBase System (CDBS) to establish common ownership of the stations.

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> *Id.* at 4. DIRECTV cites *Ho'Ana' Auao Community TV v. EchoStar Communications Corporation*, 18 FCC Rcd 2487 (2003) at para. 6 ("the rule does not specify the location where such notice must be directed"); *State of Wisconsin – Educational Communications Board v. DIRECTV*, 18 FCC Rcd 20261 (2003) ("*WECB*") at para. 7 ("the Commission has not established an official address policy for purposed of DBS must carry election notices").

<sup>22</sup> *Id.* at 4, citing *WECB* at para. 7.

<sup>23</sup> *Id.* at 2, Exhibit 2.

<sup>24</sup> Reply at 2.

<sup>25</sup> *Id.*, citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, 6732 (1994).

<sup>26</sup> *Id.* at 3, citing *DBS Broadcast Carriage Reconsideration Order*, 16 FCC Rcd at 16578.

<sup>27</sup> *Id.* at 3.

making the timing of its mandatory carriage request irrelevant.<sup>28</sup>

7. The Commission has not established an “official address” policy for purposes of DBS must carry election notices.<sup>29</sup> Instead, we examine the particular circumstances presented to determine whether the satellite carrier acted reasonably in fulfilling its notice obligations.<sup>30</sup> We do not find that DIRECTV acted reasonably in the particular circumstances presented by this case. The record shows that DIRECTV provided notice of its intent to provide local-into-local service to the general manager of “KTEL 25” at an address in Albuquerque, N. M. The letter specifically addresses “KTEL 25” in the subject line and does not mention KTLL. DIRECTV cites the Media Bureau’s CDBS in establishing common ownership of the two stations. We note that the CDBS data page for KTEL, provided by DIRECTV,<sup>31</sup> has a link for accessing the mailing address of the station. In fact, when that link is activated, the CDBS indicates a mailing address for KTEL of P.O. Box 3757, Lubbock, Texas. We find under these circumstances that DIRECTV was not justified in believing it had fulfilled its notice obligations. Accordingly, we find that KTLL is entitled to mandatory carriage on DIRECTV’s satellite system within 75 days of delivering a good quality signal to DIRECTV’s local receive facility.<sup>32</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66(d)(2)(ii) of the Commission’s rules, 47 C.F.R. § 76.66(d)(2)(ii), that the carriage complaint filed by Ramar Communications II, Ltd., licensee of television station KTLL-TV, Durango, Colorado, against DIRECTV, **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that KTLL-TV Durango, Colorado is entitled to carriage within 75 days from the date on which KTLL provides a good quality signal to DIRECTV’s local receive facility.

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission’s rules.<sup>33</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Ho’Ana’Auao Community TV, Inc. v Echostar Communications Corporation*, 18 FCC Rcd 2487, 2489 (2003); *Entravision Holdings, LLC v Echostar Communications Corporation*, DA 03-2935 (released September 21, 2003).

<sup>30</sup> *Id.*

<sup>31</sup> See Opposition at Exhibit 2.

<sup>32</sup> In the *DBS Broadcast Carriage Reconsideration Order* we found that, in the context of DBS carriers’ commencement of mandatory carriage, 75 days is a reasonable time frame within which a satellite carrier could arrange for carriage of a station following delivery of a good quality signal from a broadcaster. *DBS Broadcast Carriage Reconsideration Order*, 16 FCC Rcd 16544 at n.198.

<sup>33</sup> 47 C.F.R. § 0.283.